

No. 23-975

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IN THE  
**Supreme Court of the United States**

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SEVEN COUNTY INFRASTRUCTURE COALITION, ET AL.,

*Petitioners,*

v.

EAGLE COUNTY, COLORADO, ET AL.,

*Respondents.*

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On Writ of Certiorari to the United States  
Court of Appeals for the District of Columbia Circuit

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**RESPONDENTS' MOTION FOR DIVIDED ARGUMENT**

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Dated: October 25, 2024

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Pursuant to Rules 21 and 28.4 of the Rules of this Court, respondent Eagle County, Colorado (“Eagle County”), and respondents Center for Biological Diversity, Living Rivers, Sierra Club, Utah Physicians for a Healthy Environment, and WildEarth Guardians (“Environmental Respondents”) respectfully move for divided argument. This case is scheduled for oral argument on December 10, 2024. Eagle County and the Environmental Respondents propose to divide respondents’ time equally, with fifteen minutes for Eagle County and fifteen minutes for Environmental Respondents.<sup>1</sup> Granting this motion therefore would not require the Court to enlarge the scheduled time for argument, and the Court has not scheduled another case for argument on the same day. The division of argument time will ensure that both sets of respondents—one a local government in an area where particular environmental effects of the proposed railway will be felt; the other, a group of environmental organizations with deep expertise in and commitment to the legal issues at stake in this case, representing people who will also feel the environmental effects—can adequately present their own distinct perspectives and represent their own interests.

1. This case involves a challenge under the National Environmental Policy Act (“NEPA”) to an order of the Surface Transportation Board (“Board”) authorizing the construction and operation of a new rail line in the Uinta Basin in

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<sup>1</sup> The United States and other federal entities are also respondents, but have filed a brief supporting petitioners as to the disposition of this case (though disagreeing with aspects of petitioners’ reasoning). We understand that the Solicitor General intends to file a motion to share time with petitioners and does not seek any portion of respondents’ time.

Utah that will primarily be used to take new crude oil produced in the Basin to market.

2. Below, Eagle County and Environmental Respondents filed separate petitions for review of the Board's order in the United States Court of Appeals for the District of Columbia Circuit. The court of appeals consolidated the two petitions and heard the cases together. Pet. App. 13a. Before the court of appeals, although Eagle County and the Environmental Respondents both argued that the Board had violated NEPA, they raised related but distinct points in support of their arguments.

3. As relevant here, the court of appeals ultimately agreed with a subset of the arguments raised by Eagle County and, separately, a subset of the arguments raised by Environmental Respondents. It therefore granted the petitions in part, vacated the Board's order as arbitrary and capricious, and remanded the matter to the Board for further proceedings.

4. This Court granted certiorari to address the question whether NEPA "requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority." Pet. i.

5. Divided argument is appropriate here because respondents have distinct perspectives on the question presented, which they have articulated in two separate briefs. This Court often grants divided argument when two sets of parties with their own counsel each file separate briefs emphasizing different arguments in support of the same overarching disposition. *See, e.g., Fulton v. City of*

*Philadelphia*, No. 19-123, 141 S. Ct. 230 (Oct. 5, 2020); *Kelly v. United States*, No. 18-1059, 140 S. Ct. 661 (Dec. 16, 2019); *Rucho v. Common Cause*, No. 18-422, 139 S. Ct. 1316 (Mar. 15, 2019); *McDonald v. City of Chicago*, No. 08-1521, 130 S. Ct. 1317 (Jan. 25, 2010).

6. Eagle County’s brief emphasizes the aspect of this case in which Eagle County has a strong and local interest: the Board’s arbitrary discussion of “downline” environmental effects stemming from the substantial increase in train traffic on an existing rail line in Colorado, which passes through Eagle County. The Environmental Respondents emphasize the Board’s failure to consider environmental effects stemming from increased production of crude oil in the Basin and from refining that crude. The distinction between these different sets of environmental effects is important because the Board and the court of appeals took different approaches to these issues below. The Board did not consider certain environmental effects of the increased production of Basin crude and refining of Basin crude, and the court of appeals held that its explanation for not doing so was insufficient. The Board did evaluate downline effects in Colorado, though its analysis failed to comply with NEPA. Eagle County’s brief also explains why the downline effects are not properly part of the case before this Court given the way petitioners chose to present the case at the certiorari stage.

7. This Court has also routinely allowed divided argument when, as here, a government entity and a private party are on the same side of a dispute. That practice recognizes that governmental parties have distinct interests that would be

more difficult for a private organization to represent. *See, e.g., Am. Legion v. Am. Humanist Ass'n*, No. 17-1717, 139 S. Ct. 951 (U.S. Jan. 22, 2019) (dividing argument between the Maryland-National Capital Park and Planning Commission and private petitioners); *see also Dep't of Commerce v. New York*, No. 18-966, 139 S. Ct. 1543 (Apr. 12, 2019) (state and private petitioners); *Tennessee Wine & Spirits Ass'n v. Blair*, No. 18-96, 139 S. Ct. 783 (Jan. 4, 2019) (state and private petitioner); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, No. 16-111, 138 S. Ct. 466 (Nov. 21, 2017) (state agency and private respondents). As a local government, Eagle County has a unique perspective on the importance of NEPA for states and localities.

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For the foregoing reasons, Eagle County and the Environmental Respondents respectfully request that the Court permit divided argument.

Respectfully submitted.

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Dated: October 25, 2024